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*2017 Local Government
Officials Conference*

*Legal Update for
Townships*

Presented by:
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Deputy Chief Legal Counsel



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AGENDA

- Ohio Attorney General Opinions
- Legislative Update
- Case Law Update
- Recent AOS Bulletin
- Ethics Opinions



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Ohio Attorney General Opinions



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County Comm's and Township Trustees May Agree:

- County to repair and maintain Twp driveways, parking areas and structures
- County may require Cty Engineer to maintain and repair those driveways and parking areas, not buildings
- County may use motor vehicle fuel and excise tax and license tax revenues

OAG 2017-008



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Health Insurance Reimbursement OAG 2017-007



- ORC 505.60(D) does not authorize reimbursement out-of-pocket premiums for dependents when officer or employee elects to participate in township insurance but elects not to participate in township insurance for dependents.



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Join with County/Municipality to Demolish Vacant Buildings, Remediate Nuisance Properties OAG 2016-038 OAG 2017-001

- No authority to form a joint enterprise.
- May form a regional council of governments.



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Two or more public offices or positions are compatible: 7 Questions

- 1) Either position classified?
- 2) Constitution or statute prohibit?
- 3) One position subordinate?
- 4) Physically possible to do both?
- 5) Conflict of Interest?
- 6) Charter/resolution/ordinance control?
- 7) Fed/State/Local regulation apply?



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Compatibility
OAG 2016-036 and 2016-037

- Member Board of Trustees may be compatible with position:
 - Prosecutor's secret service officer
 - Prosecutor's legal secretary



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Compatible:
Administrator of Home Rule Township and Member of County Planning commission

OAG 2016-35

Yes, if conflict of interest is avoided.



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**Compatible: Director of County
DJFS and Township Trustee**



OAG 2016-31
Yes, if conflict of
interest is
avoided.



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**Incompatible: Deputy
County Engineer and
Township Trustee**



OAG 2016-029

Deputy County Engineer who is responsible for planning, designing, and inspecting road or bridge work performed by a board of township trustees and making and approving estimates for township road projects may not hold simultaneously the office of township trustee in the same county.



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OAG 2016-029, cont.

Superintendent employed by county engineer may simultaneously hold the office of township trustee, provided he does not approve, supervise or inspect road work completed by the board of trustees.



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Incompatible!

May not hold, within same county, positions of member of board of township trustees and deputy county treasurer.

OAG 2016-028



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Compatible: Executive Director of Children Services Board and Member of Board of Township Trustees

OAG 2016-027

- Provided that no contract exists between township and children services board



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Compatible:

- A person may serve as member of board of township trustees and county dog warden, within the same county, provided election for trustee is nonpartisan.
- OAG 2016-025



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Township Fire Department

- Established under ORC 505.37
- No authority to purchase a portion of a building to house fire-fighting equipment.



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Legislative Update



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The 21st Century Cures Act



- Federal Law amended to permit small employers to reimburse for out-of-pocket premiums if employer does not offer a health plan and other conditions met.



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PUBLIC RECORDS ACT

PUBLIC RECORD

ORC 2743.75

- "The court of claims shall be the sole and exclusive authority in this state that adjudicates or resolves complaints based on alleged violations" of the Public Records Act.



- The statute outlines a procedure for filing.
- Aggrieved persons may still file a mandamus action.



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ATTORNEY'S FEES ORC 149.43(C)(3)(b)(iii)



- If a public office produces records only after a mandamus action is filed, and the court finds bad faith, the court may award attorney's fees to the complainant.



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ATTORNEY'S FEES (*cont'd*)

ORC 149.43(C)(4)

- Reduction – If the court determines that an alternative means should have been pursued to more effectively and efficiently resolve the dispute, the court may reduce the attorney's fees awarded.



- Determination is based on the factual circumstances of each request.



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Personal Information ORC 149.45

- Personal information is not a public record; this includes an individual's social security number, driver license number, bank account number, credit and/or debit card number, and state or federal tax ID number.



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Public records — records “kept by” any public office



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Case Law Update



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State ex rel. Pietrangelo v. Avon Lake

Records relating to pending litigation between the parties are exempt from disclosure if disclosure would result in harm to one side, such as an advantage in litigation. Harm from disclosure of attorney-client communication must not be too remote or speculative.



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State ex rel. Cincinnati Enquirer et al. v. Deters

- Prosecutors are entitled to review body camera videos to determine whether any redaction is necessary before production.
- Responding within a reasonable period of time is based on the facts and circumstances of the situation.



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State ex rel. Cincinnati Enquire v. Ohio Department of Public Safety

- Ohio law enforcement dash-cam recordings are public records that cannot be shielded in their entirety, but portions considered “investigatory work product” can be withheld.
- Decisions about whether an exception to public-records disclosure applies to dash-cam recordings require a case-by-case review to determine whether the requested recordings contain investigative work product.



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OPEN MEETINGS ACT

White v. King, 2016-Ohio-2770

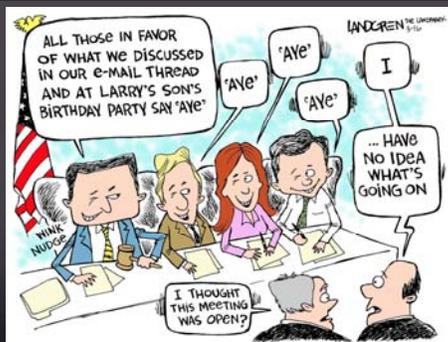
- The Open Meetings Act “prohibits any private prearranged discussion of public business by a majority of the members of a public body regardless of whether the discussion occurs face to face, telephonically, by video conference, or electronically by e-mail, text, tweet, or other form of communication.”



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CREDIT CARD CASH WITHDRAWALS
Bulletin 2016-004

- Public transactions in cash are strongly disfavored
- Few reasons exist for a public entity to use cash
- Rebuttable presumption that cash withdrawals are not for a public purpose
- Public entities should develop, maintain, and strictly apply appropriate authorization and tracking controls incident to credit card usage, particular emphasis on cash withdrawals

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Advice
Ethics Education
Financial Disclosure
Forms
Investigation



Ohio Ethics Commission Review

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OHIO ETHICS COMMISSION
OPINION 2016-001



Restrictions on Public Officials Employed by Entities that Receive Public Financial Assistance

- Can a council member of a municipality that provides financial support to a nonprofit corporation be employed as the corporation's director?
 - R.C. 2921.42(A)(3) prohibits a public official from also being employed by a nonprofit or for profit corporation, company, or other entity, where:
 - the establishment or operations of the entity is dependent upon receipt of the public agency's financial assistance, OR
 - the public official would otherwise profit from the award of the contract.



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OHIO ETHICS COMMISSION
Opinion 2010-03

- Can a public official or employee:
 - Hire a family member
 - Use influence to secure a job for family member
 - Participate in matters affecting family member's employment
 - Can two family members work for same public employer




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Ohio Ethics Commission
Opinion 2010-03 (cont'd)

Public officials or employees:

- ✗ Cannot hire a family member
- ✗ Cannot use influence to secure job for a family member
- ✗ Cannot give or use influence to secure for a family member

Raises

Promotions

Job advancements

Overtime pay or assignments

Favorable performance evaluations

Any other thing of value

👍 **Two family members can work for same public employer**



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Ohio Ethics Commission
Opinion 2010-03 (cont'd)

Family Member:

Parents or step-
parents
Grandparents
Spouse
Children or step-
children
(Dependent or not)



Grandchildren
Siblings
Any other blood or
marriage relative
Living in same
household



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Questions?



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